

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

DIANA FRANCES BRATTON
TX-1324411-R

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DOCKETED COMPLAINT NO.
10-309

AGREED FINAL ORDER

On the 11th day of May, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of Diana Frances Bratton (the "Respondent").

In order to conclude this matter, neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order.

FINDINGS OF FACT

1. Respondent Diana Frances Bratton is a Texas state certified residential real estate appraiser who holds certification number TX-1324411-R, and was certified by the Board during all times material to the above-noted complaint.
2. Respondent appraised real property located at: 4801 Hidden Creek Lane, Spicewood, Texas 78669 (the property") on or about March 1st, 2009.
3. Thereafter a complaint was filed with the Board. The complaint alleged that the Respondent produced an appraisal report for the property that did not conform to the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. OCC. CODE CHPT. 1103 (the "Act") and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").
4. Thereafter the Board, in accordance with the mandate of the Administrative Procedure Act (the "APA"), TEX. GOV'T CODE ANN. CHPT. 2001, and TEX. OCC. CODE CHPT. 1103 (the "Act"), notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent was also requested to provide certain documentation to the Board, which she submitted.
5. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the property:
 - a) USPAP Ethics Rule (record keeping) -- Respondent violated the Ethics Rule because she failed to maintain a work file containing all data, information and

documentation necessary to support her opinions, analyses and conclusions as required by the record keeping provisions;

- b) USPAP Scope of Work Rule and 1-2(h) – Respondent has failed to comply with the scope of work rule because she did not perform the research and analyses necessary to develop credible assignment results supported by relevant evidence and logic and misrepresented her scope of work;
- c) USPAP Standards 1-4(a) & 1-4(b) – Respondent failed to understand and correctly employ recognized methods and techniques to produce a credible appraisal;
- d) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) -- Respondent failed to adequately identify and report improvement(s) description;
- e) USPAP Standards 1-2(e)(iv) & 2-2(b)(viii) – Respondent failed to report easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, and ordinances or other items of a similar nature;
- f) USPAP Standards 1-3(a) & 2-2(b)(viii); 1-1(b) – Respondent failed to identify and analyze factors affecting marketability (such as economic supply and demand and market area trends);
- g) USPAP Standards 1-3(b) & 2-2(b)(ix) – Respondent failed to develop an opinion of the highest and best use;
- h) USPAP Standards 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 1-6(a) & (b) -- Respondent failed to adequately collect, verify, and reconcile comparable sales data;
- i) USPAP Standards 1-4(b)(i) & 2-2(b)(viii) – Respondent failed to use an appropriate method or technique to develop an opinion of the site value and failed to disclose the analysis and reasoning that supported her site value determination;
- j) USPAP Standards 1-4(b)(ii) & 2-2(b)(viii) – Respondent failed to provide support for her determination of the cost new of improvements, misrepresented her source of the cost new of improvements, misrepresented the cost new of improvements and failed to employ recognized methods and techniques, and did not properly collect, verify, analyze and reconcile this data;
- k) USPAP Standards 1-4(b)(iii) & 2-2(b)(viii) – Respondent did not collect, verify, analyze and reconcile accrued depreciations and failed to employ recognized methods and techniques because she failed to discuss, analyze, reconcile or calculate correctly any accrued depreciation;

- l) USPAP Standards 1-5(b) & 2-2(b)(viii); 1-1(b) – Respondent failed to analyze all sales of the subject within 3 years prior to the effective date of the appraisal;
- m) USPAP Standards 1-6(a) & (b) & 2-2(b)(viii) – Respondent failed to reconcile the quality and quantity of the data within the approaches used and the applicability or suitability of the approaches; and,
- n) USPAP Standards 1-1(a), 1-1(b), 1-1(c); and 2-1(a) – Respondent produced a misleading appraisal report for the property that contained several substantial errors of omission or commission by not employing correct methods and techniques and not analyzing and reconciling significant and material information she had a duty to analyze and reconcile. This resulted in an appraisal report that was not credible or reliable.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103.
2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3).
3. Respondent made material misrepresentations and omissions of material fact in violation of 22 TEX. ADMIN. CODE § 153.20(a)(9).
4. The parties are authorized to resolve their dispute by means of a consent order in accordance with Tex. Occ. Code §1103.458.

ORDER

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that Respondent's Texas appraiser certification be suspended for a period of 12 months, effective **5:00 p.m., May 17th, 2013**.

IT IS FURTHER ORDERED that beginning at **5:00 p.m., May 17th, 2013**, the suspension is to be fully probated for the entire 12 month period ending **May 17th, 2014**, subject to the following terms and conditions:

1. **EDUCATION.** On or before **November 17th, 2013**, Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Order must be classes approved by the Board. Unless otherwise noted below, all classes must require in-class attendance and have an exam. Respondent must receive a passing grade on the exam given in each class. None of the required classes will count toward Respondent's continuing education requirements for certification. Respondent is solely responsible for locating and scheduling classes to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure

adequate time for completion of the course in the event of course cancellation or rescheduling by the course provider.

- A. A minimum 15 classroom-hour course in USPAP; and
 - B. A minimum 8 classroom-hour course in Sales Comparison Approach;
 - i. No examination shall be required for this course.
2. **MENTORSHIP.** On or before **August 17th, 2013**, Respondent shall complete 14 hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board in accordance with the schedule and topics set out below. Respondent shall submit a certification of completion signed by the approved certified USPAP instructor on or before the due date listed for each mentorship requirement. Respondent is solely responsible for locating and scheduling an approved mentor to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.
- A. 8 hours of mentorship in sales comparison data analysis, with 4 of those hours dealing with analysis, methods and techniques related to adjustments;
 - B. 3 hours of mentorship in site analysis; and,
 - C. 3 hours of mentorship in cost of improvements and depreciation analysis;
3. **LOGS.** On or before **February 24th, 2014**, Respondent shall submit to the Board an appraisal experience log on a form prescribed by the Board for the period of November 17th, 2013 to February 17th, 2014. The log shall detail ***all*** real estate appraisal activities Respondent has conducted during that three month period. This log shall be signed by Respondent and contain a notarized affidavit attesting the log is true, complete and accurate. Upon request from the Board, Respondent shall provide copies of her appraisal reports and work files for any appraisal assignments Respondent performs during the course of this period of probation within twenty days of receiving any such request. The Board shall request no more than 2 such reports and work files;
4. **NO TRAINEES.** Respondent is prohibited from sponsoring, employing or using any appraiser trainees in her real state appraisal activities during the entire period of her 1 year probated suspension.
5. Fully and timely comply with all of the provisions of this Agreed Final Order; and,
6. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

IT IS FURTHER ORDERED that Respondent pay an administrative penalty in the amount of \$1,200.00 on or before June 7th, 2013. However, IT IS FURTHER ORDERED that this

\$1,200.00 administrative penalty is to be fully probated subject to timely completion of all the terms contained in this agreed final order.

RESPONDENT'S FAILURE TO TIMELY COMPLY WITH ANY TERM IN THIS AGREED FINAL ORDER, WHICH HAS A SPECIFIC, STATED DUE DATE SHALL RESULT IN THE AUTOMATIC REVOCATION OF PROBATION AND THE SUSPENSION IMPOSED IN THIS AGREED FINAL ORDER SHALL BE EFFECTIVE FOR THE FULL TERM COMMENCING ON THE EFFECTIVE DATE OF THE REVOCATION OF PROBATION.

ANY SUCH SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS.

RESPONDENT, BY SIGNING THIS AGREED FINAL ORDER, WAIVES THE RESPONDENT'S RIGHT TO A FORMAL HEARING, ANY MOTION FOR REHEARING, AND ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

RESPONDENT IS SOLELY RESPONSIBLE FOR TIMELY DELIVERY TO THE BOARD OF ALL DOCUMENTS AND PAYMENTS NECESSARY FOR COMPLIANCE OF THIS AGREED FINAL ORDER. PAYMENT OF ANY ADMINISTRATIVE PENALTIES DUE MUST BE IN THE FORM OF A CASHIER'S CHECK OR MONEY ORDER MADE PAYABLE TO THE TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD. RESPONDENT SHALL RETAIN DOCUMENTATION (REPLY EMAIL, FAX CONFIRMATION, RETURN RECEIPT, ETC.) CONFIRMING RECEIPT BY THE BOARD OF ALL THE NECESSARY DOCUMENTS.

RESPONDENT SHALL SEND ALL DOCUMENTS AND PAYMENTS NECESSARY FOR COMPLIANCE BY: (1) EMAIL TO COMPLIANCE.TALCB@TALCB.TEXAS.GOV, (2) FAX TO (512) 936-3966, ATTN: COMPLIANCE, OR (3) CERTIFIED MAIL RETURN RECEIPT REQUESTED TO STANDARDS & ENFORCEMENT SERVICES, TEXAS APPRAISER LICENSING & CERTIFICATION BOARD, STEPHEN F. AUSTIN BUILDING, 1700 N. CONGRESS AVE., SUITE 400, AUSTIN, TX 78701.

I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED HEREIN ARE CORRECT. I UNDERSTAND ALL OF MY COMPLIANCE OBLIGATIONS UNDER THIS AGREED FINAL ORDER AND THE CONSEQUENCES FOR FAILING TO COMPLY WITH THOSE OBLIGATIONS.

I UNDERSTAND THAT THE BOARD AND ITS STAFF CANNOT PROVIDE ME WITH LEGAL ADVICE. I AM AWARE OF MY RIGHT TO A HEARING, AND HEREBY WAIVE A HEARING AND ALSO WAIVE ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER, INCLUDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS AGREED FINAL ORDER, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK OR FAILURE TO PROVIDE LOGS.

This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 21 day of MARCH, 2013.

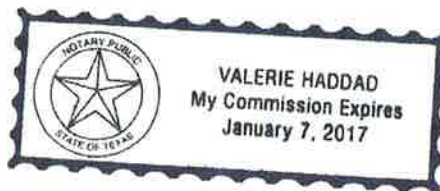
Diana Frances Bratton
DIANA FRANCES BRATTON

Ted Whitmer
TED WHITMER, ATTORNEY FOR
DIANA FRANCES BRATTON

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 21 day of March, 2013, by DIANA FRANCES BRATTON, to certify which, witness my hand and official seal.

Valerie Haddad
Notary Public Signature

Valerie Haddad
Notary Public's Printed Name



Signed by the Standards and Enforcement Services Division this 16TH day of MAY, 2013.

Troy Beaulieu
Troy Beaulieu, TALCB Staff Attorney

Signed by the Commissioner this 17 day of May, 2013.



Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 17 day of May, 2013.



Walker Beard, Chairperson
Texas Appraiser Licensing and Certification Board